

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 26-cv-02410-PAB

EDGAR URIEL MARTINEZ-SALAMANCA,

Petitioner,

v.

JUAN BALTAZAR, Warden, Aurora ICE Processing Center,

DAVID VENTURELLA, Acting Director of U.S. Immigration and Customs
Enforcement,

MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security, and
TODD BLANCHE, Acting Attorney General of the United States,

Respondents.

**RESPONSE TO SUPPLEMENTAL BRIEFING REGARDING WARRANTLESS
ARREST CLAIM IN PETITION FOR HABEAS CORPUS**

In response to the court's order (ECF No. 10), respondents offer this response to the supplemental briefing on the warrantless arrest claim.

I. The court lacks jurisdiction to consider the warrantless arrest claim.

The warrantless arrest claim is beyond this court's jurisdiction. Congress has consolidated "[j]udicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States," 8 U.S.C. § 1252(b)(9), into "a single proceeding: the petition for review. *Nken v. Holder*, 556 U.S.

418, 424 (2009). Petitions for review must be filed in the courts of appeals and may only be filed after a removal order has been entered and become final. 8 U.S.C. § 1252(a)(5), (b)(1). No other court has jurisdiction “to review such an order or such questions of law or fact. 8 U.S.C. § 1252(b)(9).

The Tenth Circuit has held that “the legality of [an alien’s] arrest and search challenges are customarily tested . . . when a deportation order is received.” *Min-Shey Hung v. United States*, 617 F.2d 201, 202 (10th Cir. 1980). In *Min-Shey Hung*, an alien who was arrested without a warrant filed a habeas petition shortly after his arrest, seeking his release based on the allegedly unlawful arrest. *Id.* at 201. The Tenth Circuit held that the alien could not bring an immediate challenge to the arrest in habeas. *Id.* at 202–03. Rather, the alien could seek review of the arrest later as part of review of his deportation order (if one was issued).¹ *Id.* Accordingly, the propriety of petitioner’s arrest is a “question[] of law [or] fact . . . arising from [an] action taken . . . to remove [him] from the United States.” *See* 8 U.S.C. § 1252(b)(9). Jurisdiction thus lies only in the court of appeals upon a petition for review.

II. Petitioner was arrested pursuant to a warrant.

Petitioner’s warrantless arrest claim also lacks merit, because he was arrested pursuant to the January 13, 2026 warrant that he attached to his habeas petition. *Compare*

¹ *Min-Shey Hung* predated the modern petition for review process, which explains why the court refers to review of deportation orders occurring in district court. *See* 617 F.2d at 202-03. As described, however, petitions for review must now be filed in the courts of appeals.

ECF 1-1 at 4 *with* Ex. A (attached) at ¶ 6 and Attachment 1. That warrant was issued “at the time of his arrest” based on a probable cause determination that he was subject to removal, which was made based on a charging document, petitioner’s statements, biometric information, and a record check. Ex. A at ¶ 6 and Attachment 1.

Contrary to petitioner’s supplemental briefing, the basis for the arrest warrant does not suggest that he was arrested prior to the issuance of a warrant. ECF 11 at 2-5. The charging document was issued the same day as the arrest warrant. Ex. A at ¶ 10. Nothing indicates that it was issued after his arrest. Nor does the habeas petition indicate that his statements and biometric information were collected after his arrest. Similarly, the petition does not indicate that the records check occurred after his arrest.

III. Even an invalid warrantless arrest does not require release.

Even if petitioner had been subject to a warrantless arrest, that does not require his release now. In *Min-Shey Hung*, the Tenth Circuit held that when immigration authorities promptly make a probable cause determination after an allegedly unlawful arrest, the alien cannot challenge the arrest in habeas and obtain release based upon the arrest itself. 617 F.2d at 202–03. There, the alien was arrested without a warrant and was then issued an order to show cause why he should not be deported the next day. *Id.* at 201–02. Five days later, he filed a habeas petition seeking his release based on his allegedly unlawful arrest. *See id.* at 202.

Observing that the alien “was . . . well along the deportation proceedings when the petition for habeas corpus was filed challenging his arrest,” the Tenth Circuit found that despite the warrantless arrest, probable cause had been determined when the order to show cause was issued. *Id.* And it held that the district court could not “consider[] the arrest challenge while the [removal] proceedings were in progress and had passed the probable cause stage. *Id.* at 203. Rather, it concluded that “[t]he custody of the [alien] during the course of the [removal] proceedings, the releases, bonding and appearances[,] should be under control of the [government]. *Id.*

Other courts have applied the same rule. *See Nishimura Ekiu v. United States*, 142 U.S. 651, 662 (1892) (stating that the “object” of a habeas proceeding “is to ascertain whether the prisoner can lawfully be detained,” and holding that “if sufficient ground for . . . detention . . . is shown, [the prisoner] is not to be discharged for defects in the original arrest or commitment” (citations omitted)); *Arias v. Rogers*, 676 F.2d 1139, 1143 (7th Cir. 1982) (Posner, J.) (applying the rule to an immigration arrest and observing that “detention [may] be legal although the arrest was not”); *Chavez de Vasquez v. Baker*, No. SAG-25-03657, 2025 WL 3713773, at *2 (D. Md. Dec. 23, 2025) (finding “no authority” to support granting “individual habeas relief as a result of a warrantless immigration arrest after the individual’s immigration proceedings had begun”).

This approach is not inconsistent with the Fourth Amendment. Indeed, in *Min-Shey Hung*, the Tenth Circuit found support for its reasoning in *Gerstein v. Pugh*, 420

U.S. 103 (1975), a Fourth Amendment case in which the Supreme Court observed that it “ha[d] never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant. *Id.* at 113 (citations omitted); *see also Min-Shey Hung*, 617 F.2d at 202 (discussing *Gerstein*).

Further, the Supreme Court has held that in the immigration context, the Fourth Amendment does not demand voiding removal proceedings that follow from an improper arrest as a suppressive remedy. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1047 (1984) (declining to adopt a broad exclusionary rule for civil immigration proceedings, and finding that suppression leading to “release would clearly frustrate the express public policy against an alien’s unregistered presence in this country”); *see also United States v. Garcia-Beltran*, 443 F.3d 1126, 1132 (9th Cir. 2006).

Petitioner was issued a notice to appear the same day as his arrest. Ex. A at ¶ 10. He then appeared before an immigration judge less than two months later, on March 11, where the immigration judge sustained the charge of removability. Ex. A at ¶ 11. He filed his habeas petition two and a half-months later. ECF No. 1. Petitioner was thus “well along” in removal proceedings following a probable cause determination when he filed his habeas petition. *See Min-Shey Hung*, 617 F.2d at 203. Petitioner has not alleged any deficiency in his notice to appear or other processing documents. For these reasons, it is respondents’ position that petitioner’s third claim is not cognizable.

Dated: June 16, 2026.

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CERTIFICATE OF SERVICE

I certify that on June 22, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all persons who have registered for such notifications.

s/ J. Bishop Grewell
U.S. Attorney's Office